APPENDIX A

[Filed Aug. 21, 1996]

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 21st day of August, one thousand nine hundred and ninety-six.

Present: HON. THOMAS J. MESKILL,
HON. GUIDO CALABRESI,
HON. FRED I. PARKER,
Circuit Judges.

#96-7024

RED ROCK COMMODITIES, LTD.
and RED ROCK HOLDINGS LTD.,
Plaintiffs-Appellants,

v.

ABN-AMRO BANK, N.A.,
Defendant-Appellee.

ORDER

UPON CONSIDERATION of this appeal from a judgment of the United States District Court for the Eastern District of New York (Scheindlin, *J.*), it is hereby

ORDERED, ADJUDGED, AND DECREED that the judgment be and it hereby is AFFIRMED.

Red Rock Commodities and Holdings sued ABN for damages arising out of a complex series of transactions that culminated in ABN seeking the appointment of a liquidator and instituting foreclosure proceedings against Red Rock in Israel. The United States District Court for the Eastern District of New York (Scheindlin, *J.*) found that none of Red Rock's allegations were sufficient to state a cause of action and dismissed the complaint pursuant to 12(b)(6). Red Rock appeals. We review the grant of a 12(b)(6) motion *de novo*. *Hertz Corp. v. City of New York*, 1 F.3d 121, 125 (2d Cir. 1993), *cert. denied*, 114 S. Ct. 1054 (1994). Applying that standard, we affirm for substantially the reasons given by the district court.

In passing, the district judge found that since liquidation and foreclosure were procedural, the choice-of-law provision in the contract between Red Rock and ABN that stated that New York law would apply was irrelevant. *See Woodling v. Garrett Corp.*, 813 F.2d 543, 551 (2d Cir. 1987) (contractual choice-of-law provisions implicate substantive but not procedural law). We note that while the appointment of a liquidator is procedural, elements of the liquidation and foreclosure themselves may be substantive. Red Rock did not, however, allege in more than a conclusory fashion that there were any relevant differences between New York and Israeli law with regard to the substantive law of liquidation and foreclosure as they would apply to this case. Thus, even if substantive law were implicated, the complaint failed to state a claim on which relief could be granted.

We have examined all the appellant's contentions, and find them to be without merit. The district court's judgment is therefore affirmed.

/s/ Thomas J. Meskill
THOMAS J. MESKILL

/s/ Guido Calabresi
HON. GUIDO CALABRESI

/s/ Fred I. Parker
HON. FRED I. PARKER
Circuit Judges

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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94 Civ. 8390 (SAS)

RED ROCK COMMODITIES, LTD.,
and RED ROCK HOLDINGS, LTD.,
Plaintiffs,

- against -

ABN-AMRO BANK, N.A.,
Defendant.

OPINION & ORDER

SHIRA A. SCHEINDLIN, U.S.D.J.:

Defendant ABN-AMRO Bank, N.A. ("ABN-AMRO") moves, pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 9(b), to dismiss the complaint filed against it by Plaintiffs Red Rock Commodities, Ltd. ("Commodities") and Red Rock Holdings, Ltd. ("Holdings") (jointly "Red Rock"). For the reasons set forth below, the motion is granted.

BACKGROUND

Both Commodities and Holdings are Delaware corporations with their principal place of business in New York, New York. *See* Second Amended Complaint ("Am. Compl.") at ¶¶ 1, 2. Commodities engaged in international commodities transactions, while Holdings has engaged in real estate and busines ventures. *See id.*

On June 1, 1990, ABN-AMRO, a Dutch bank with its principal place of business in the Netherlands and maintaining an office in New York, New York, extended Com-

modities a fifteen million dollar credit line. *See* Promissory Note ("Note") and Security Agreement ("Sec. Agreement"), Exs. A & B annexed to Am. Compl. Using a portion of this credit line, Commodities purchased "steel billets", manufactured in Poland, and subsequently arranged for the sale and transportation of this steel to Ram Products, Inc. ("Ram") in Israel. *See* Am. Compl. at ¶¶ 9, 10.

In August, 1992 Commodities discovered that some $35 million worth of steel billets were either "fraudulently consumed or disposed of by Ram." *Id.* at ¶ 12. By this time, ABN had advanced Commodities $10 million to finance the steel billet transactions. *See id.*

Commodities believed it could protect its interests by an appointment as Ram's receiver. *See id.* at ¶ 15. With this arrangement, Commodities claims, Ram would have continued to operate and to generate profits which, in turn, could have been used to discharge Ram's debt. *See id.*

When ABN-AMRO was informed of Commodities' intended application to be appointed receiver of Ram, its representative, Paul Feldman, indicated support for the plan. *See id.* at ¶ 16. During the receivership proceedings before an Israeli court, however, ABN-AMRO opposed the appointment of Commodities' representative. *See id.* at ¶ 17. This led to the appointment of another creditor's counsel "to assist in liquidating Ram." *Id.* at ¶ 18.

In June, 1993, ABN-AMRO's representative was appointed by the Israeli court as the Interim Liquidator of Commodities and Holdings. *See id.* at ¶¶ 21, 25. Commodities and Holdings assert that this appointment breached the express terms of the Note and the Security Agreement which require that the loan agreement be governed by New York law and that litigation be brought in New York courts. *See id.* at ¶¶ 29-32. ABN-AMRO's actions are also alleged to have been a breach of the im-

plied covenant of good faith and fair dealing. *See id.* at ¶¶ 34, 35. Commodities also claims that the alleged misrepresentation of ABN-AMRO's intentions regarding its support of Commodities' appointment as receiver was both fraudulent and constituted a tortious interference with business relations. *See id.* at ¶¶ 37-42, 45-47. Plaintiffs finally claim that two foreclosure proceedings, instituted by the Interim Liquidator against two of Holdings' properties in Israel, constitute both conversion and trespassory taking. *See id.* at ¶ 50.

DISCUSSION

I. *Legal Standard*

When considering a motion to dismiss, all factual allegations contained in the complaint are presumed to be true. *See Paulemon v. Tobin*, 30 F.3d 307, 308 (2d Cir. 1994); *see also Cohen v. Koenig*, 25 F.3d 1168, 1172 (2d Cir. 1994). Further, all reasonable inferences are to be drawn in favor of the non-moving party. *See Allen v. WestPoint-Pepperell, Inc.*, 945 F.2d 40, 44 (2d Cir. 1991). A complaint is dismissed, therefore, only if "it appears beyond doubt that the plaintiffs can prove no set of facts in support of [the] claim which would entitle [them] to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

II. *Breach of Contract*

The "contract" at issue is the sum of three documents: the promissory note, the security agreement and the terms and conditions. *See* Exs. A, B & C (the "loan agreement") annexed to the Am. Compl. The loan agreement contains a permissive, rather than mandatory, choice of forum clause.

> Any suit, action or proceeding against the undersigned with respect to this agreement may be brought in the Supreme Court of the State of New York,

County of New York or in the United States District Court for the Southern District of New York.

¶ XII of Terms and Conditions, annexed to Notice of Motion as Ex. C. The agreement, therefore, plainly states that an action "may" be brought in New York. Addressing a similar choice of forum clause, employing the term "shall", the Second Circuit held that " 'an agreement *conferring* jurisdiction in one forum will not be interpreted as *excluding* jurisdiction elsewhere unless it contains specific language of exclusion.' " *John Boutari & Son, Wines & Spirits, S.A. v. Attiki Importers & Distribs., Inc.*, 22 F.3d 51, 53 (2d Cir. 1994) (quoting *City of N.Y. v. Pullman, Inc.*, 477 F. Supp. 438, 442 at n.11 (S.D.N.Y. 1979)). The loan agreement contains no such exclusionary language and therefore, as a matter of law, the contract does not prohibit ABN-AMRO from availing itself of the Israeli forum.

Commodities alleges ABN-AMRO also breached the loan agreement when it "urg[ed] the Israeli Court to apply Israeli law [in appointing] an Interim Liquidator." Am. Compl. at ¶ 29(b). Commodities contends that the loan agreement requires that the loan transaction be governed by New York law. The pertinent choice of law provision in this agreement states that: "[T]he rights and obligations of the Bank and of the undersigned hereunder shall be governed by and construed in accordance with the law of the State of New York." Am. Compl. at Ex. B, ¶ 11.

New York honors a contractual choice of law provision "insofar as matters of substance are concerned." *Woodling v. Garrett Corporation*, 813 F.2d 543, 551 (2d Cir. 1987) (citing *A.S. Rampell, Inc. v. Hyster Co.*, 3 N.Y.2d 369, 381 (1957)). A "contractual choice of law provision is deemed to import only substantive law . . . not procedural law." *Id.*, citing, among others, *Sears, Roebuck & Co. v. Enco Assocs., Inc.*, 43 N.Y.2d 398, 397

(1977), *Restatement (Second) of Conflict of Laws* § 187(3) & comment h. Accordingly, procedural questions are decided under the law of the forum. *See Intercontinental Planning v. Daystrom, Inc.*, 24 N.Y.2d 372, 381 (1969). Foreclosure and liquidation actions are inherently procedural and therefore are not governed by the contractual choice of law provision.

III. *Breach of Implied Covenant of Good Faith and Fair Dealing*

New York implies a covenant of good faith and fair dealing in all contracts. *Filner v. Shapiro*, 633 F.2d 139, 143 (2d Cir. 1980). This covenant "precludes each party from engaging in conduct that will deprive the other party of the benefits of their agreement. . . . [and] [i]ntegral to a finding of a breach of the implied covenant is a party's action that directly violates an obligation that may be presumed to have been intended by the parties." *Id.* at 136. *See also Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522 (2d Cir. 1994); *Sharma v. Skaarup Ship Mgmt. Corp.*, 699 F. Supp. 440, 449 (S.D.NY. 1988), *aff'd*, 916 F.2d 820 (2d Cir 1990), *cert denied.* 499 U.S. 907 (1991).

Plaintiffs allege that ABN-AMRO's failure to support Commodities' appointment as the Ram receiver breached the covenant of good faith and fair dealing. *See* Am. Compl at ¶ 34(a). An implied covenant of good faith and fair dealing "does not extend so far as to undermine a party's 'general right to act on its own interests in a way that may incidentally lessen' the other party's anticipated fruits from the contract." *M/A-COM Security Corp. v. Galesi*, 904 F.2d 134, 136 (2d Cir. 1990) (quoting *Van Valkenburgh, Nooger & Neville Inc. v. Hayden Publishing Co.*, 30 N.Y.2d 34, 46, *cert. denied*, 409 U.S. 875 (1972)). As ABN-AMRO asserted its own $10 million claim in the RAM liquidation proceedings (Am. Compl. at ¶ 17), it was presumably acting in its own interest

when it opposed Plaintiffs appointment as liquidator. It would defy common sense to accept that ABN-AMRO opposed this appointment in order to jeopardize Plaintiffs' ability to repay the $10 million owed to ABN-AMRO.

Plaintiffs further allege that the implied covenant barred ABN-AMRO from pursuing its rights in the Israeli courts under Israeli law. *See* Am. Compl. ¶ 34(b). No implied covenant may conflict with the express terms of a contract. *See Sharma*, 699 F. Supp. at 449; *see also CIBC Bank & Trust Co. v. Banco Cent. do Brasil*, No. 94 Civ. 4733, 1995 U.S. Dist. LEXIS 6268, *32-33 (S.D.N.Y. May 9, 1995) ("[T]he implied obligation is in aid and furtherance of other terms in the agreement . . . . No obligation can be implied, however, which would be inconsistent with other terms of the contractual relationship."). As noted earlier, the loan agreement does not limit the parties to the jurisdiction and/or laws of New York. Implying such a limiting term or covenant would be contrary to the terms of the agreement and is not permitted.

In a related claim, Plaintiffs allege that ABN-AMRO made various misrepresentations to the Israeli Court "thereby obtaining appointment of its counsel as Interim Liquidator of Commodities *in Israel*." Am. Compl. ¶ 34(c) (emphasis added). This appointment is claimed to have harmed Commodities' business interests and therefore to have breached the implied covenant. *See* Am. Compl. ¶ 35. Plaintiffs state that ABN-AMRO's misrepresentations led to the Israeli court's acceptance of jurisdiction and the application of Israeli law which led to the subsequent appointment of ABN-AMRO's counsel as Interim Liquidator. *See id.* Whether or not misrepresentations were made during the court proceeding, ABN-AMRO was in no way barred from seeking the appointment of a Liquidator by an Israeli court. To imply a term prohibiting ABN-AMRO from participating in the

Israeli liquidation proceedings would conflict with the express terms of the contract. *See id.*, Ex. B at ¶ 7 (upon default . . . "[t]he Bank shall be entitled to the immediate possession of the Collateral" and may "exercise any and all of the rights and remedies provided by . . . the Terms and Conditions . . . .); *see id.*, Ex. C. at ¶ XII (permitting any action against the borrower to be brought in New York *or elsewhere*) (emphasis added).

ABN-AMRO also is alleged to have breached the implied covenant as the result of the Interim Liquidator's filing of "an ancillary petition in the United States Bankruptcy Court pursuant to 11 U.S.C. § 304 . . . seeking the turnover of all property of Commodities and Holdings" in the United States. Am. Compl. at ¶ 34(e). Because this action was taken by the Interim Liquidator, it cannot support a claim against ABN-AMRO.

Finally, Plaintiffs allege that ABN violated the implied covenant by failing to make "demand for payment as required by the Note". Am. Compl. at ¶ 34(d). There is no such requirement contained in the loan agreement. Upon default, the borrower's "liabilities shall become immediately due and payable without notice, demand of payment or presentment, all of which are hereby expressly waived." *Id.*, Ex. B at ¶ 7. Default is defined as "any event described in section VI of the Terms and Conditions." *Id.* at ¶ 7(b). Section VI of the Terms and Conditions provides that the Bank may find the borrower in default "in case the Bank deems itself insecure." *Id.*, Ex. C at ¶ VI.[1] Plaintiffs fail to allege any facts which could

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[1] Short of default, the Security Agreement provides that the Bank, upon demand, may require the borrower to "furnish such further security or make such payment on account of the liabilities as will be satisfactory to the Bank." Am. Compl., Ex. B at ¶ 6. Plaintiffs submit, however, as part of their complaint, a letter from Mr. Pri-Har, President of Commodities, to ABN-AMRO stating taht no "substitute collateral" was available. *Id.*, at Ex. D. Demand for such "further security" would have been useless.

contradict the Bank's subjective conclusions regarding the security of its debt.

IV. *Fraud*

"To plead a claim for fraud, [a plaintiff] must allege in the body of the complaint; (a) an express representation of a material fact; (b) that this representation was false; (c) that the representation was made with the intent to defraud; (d) that [the plaintiff] reasonably relied upon this representation; and (e) that [the plaintiff] suffered damages as a result." *Zaro Licensing, Inc. v. Cinmar, Inc.*, 779 F. Supp. 276, 284 (S.D.N.Y. 1991) (citing *Katara v. D.E. Jones Commodities, Inc.*, 835 F.2d 966, 970-71 (2d Cir. 1987)). Fed. R. Civ. P. 9(b) requires that fraud be alleged "with particularity." Merely reciting the elements of fraud is not sufficient to satisfy the Rule 9(b) requirements. *See Airlines Reporting Corp. v. Aero Voyagers, Inc.*, 721 F. Supp. 579, 582 (S.D.N.Y. 1989); *see also Hunter v. H.D Lee Co*, 563 F.Supp. 1006, 1012 (N.D.N.Y. 1983) ("A pleading that simply avers the technical elements of fraud does not have sufficient informational content to satisfy [Rule 9(b)'s] requirement.").

Plaintiffs fail to allege any facts which would establish an adequate causal link between the alleged fraudulent misrepresentation and the asserted consequences. Such "[i]nadequate causation is . . . fatal to a common law fraud claim under N.Y. law." *Revak v. SEC Realty Corp.*, 18 F.3d 81, 89 (1994) (quoting *Bennet v. U.S. Trust Co. of N.Y.*, 770 F.2d 308, 316 (2d Cir. 1985), *cert. denied*, 474 U.S. 1058 (1986)). Further, "[t]he requisite causation is established only where the loss complained of is a direct result of the defendant's wrongful actions and *independent of other causes.*" *Id.*, at 89-90 (emphasis added). Plaintiffs asert that the Israeli Court (1) denied Commodities' application in the Ram proceedings "as a direct result of ABN-AMRO Bank's con-

duct" and (2) that but for the misrepresentation of ABN-AMRO's support for Commodities' application, Commodities "would *not* have proceeded with its plan for appointment as receiver for Ram." Am. Compl. at ¶ 18, 41. However, Plaintiffs have no basis to assert that the court's decision was reached "independent of other causes." In fact, the Israeli court made its own independent determination of who should be the receiver, selecting another creditor's attorney over ABN-AMRO's own attorney. *Id.* at Ex. D and ¶ 18. There is no question that the choice of Receiver did not turn solely on the alleged misrepresentation, independent of other considerations.

Further, the damages alleged by Commodities are too speculative to support the fraud claim. Commodities claimed damages flowed from the alleged misrepresentation, but for which Commodities would have taken steps other than seeking receivership of Ram. *Id.* at ¶ 41. This hypothetical conduct ("some other agreement or suitable accommodation with RAM for repayment of its indebtedness") would have safeguarded the $35 million debt owed to Commodiites and would have allowed Commodities to gain control of an $80 million company (RAM). *Id.* at ¶¶ 41, 43.

Such damages have been found to be too speculative. *See e.g., Kregos v. Associated Press*, 3 F.3d 656, 665 (2d Cir. 1993), *cert. denied*, 114 S.Ct. 1056 (1994) (damages too remote when court required to speculate as to what plaintiff may have been awarded in a potential copyright case which was prevented by defendant's alleged fraud); *Lehman v. Dow Jones & Co.*, 783 F.2d 285, 296 (2d Cir. 1986) (claim for a lost finder's fee deemed too speculative). To the extent Plaintiffs claim they have been denied the potential benefit of an unspecified solution to their RAM problem, their claimed damages are analogous to those claimed in *Kregos* and *Lehman* and as such are too speculative to sustain the fraud pleading.

V. *Tortious Interference with Business Relations*

A party commits the tort of interference with business relations if it acts with "the sole purpose of harming the plaintiff" or employs "means that are 'dishonest, unfair or in any way improper' ". *Martin Ice Cream Co. v. Chipwich, Inc.*, 554 F. Supp. 933, 945 (S.D.N.Y. 1983) (quoting *Robbins v. Ogden Corp.*, 490 F. Supp. 801, 811 (S.D.N.Y. 1980)). ABNs intervention in the Ram receivership proceedings allegedly denied Commodities the business advantage that would have flowed from its appointment as receiver. *See* Am. Compl. ¶ 46. Further, the court-appointed liquidator of Holdings interfered with Plaintiffs' business by permitting one of Holdings' creditors to foreclose upon Holdings' property. *See id.*, at ¶ 47. Ts noted earlier, this latter allegation pertains to conduct over which ABN had no control.

With respect to the alleged interference resulting from ABN-AMROs involvement in the Ram receivership proceedings, Commodities alleges no facts which would establish ABN acted with the "sole purpose of harming the plaintiff." *Martin Ice Cream Co.*, 554 F. Supp. at 945. *See* Am. Compl. at ¶¶ 46, 47. Indeed, the pleading acknowledges that ABN-AMRO advanced "its own claims" in this proceeding. Am. Compl., at ¶ 17. Accordingly, when the alleged "interference is intended, at least in part, to advance its own interests, the claim *will fail* unless the means employed include criminal or fraudulent conduct." *PPX Enterprises, Inc. v. Audiofidelity Enterprises, Inc.*, 818 F.2d 266, 269 (2d Cir. 1987). For the reasons discussed above, there is no valid claim of fraud. In addition, no allegation of criminal conduct has been made. Thus, Plaintiffs have failed to allege a tortious interference with business relations.

VI. *Conversion and Trespassory Taking*

Plaintiffs claim ABN "converted and unlawfully took property belonging to Commodities and Holdings", spe-

cifically an office building in Givatim, Israel, and another building in Jaffa, Israel. Am. Compl. at ¶ 50.

Conversion may be claimed only with respect to personal, as opposed to real, property. *East River Sav. Bank v. Secy of Hous. & Urban Dev.*, 702 F. Supp. 448, 455 (S.D.N.Y. 1988) (citing *Boll v. Town of Kinderhook*, 99 A.D.2d 898, 899, 472 N.Y.S.2d 496, 498 (3d Dep't 1984)). Because Plaintiffs assert a conversion claim with respect to real property, the claim must be dismissed.

Thespassory taking is not an independent cause of action. Rather, it is an element of larceny. *See* N.Y. Penal Law § 155.05(2) (McKinney 1988) ("Larceny includes a wrongful taking . . . [with intent] . . . committed . . . [b]y conduct heretofore defined or known as common law larceny by trespassory taking"); *see also Bell v. United States*, 462 U.S. 356, 358-9 (1982) (tracing the evolutio of larceny). If Plaintiffs intended to allege larceny (theft), they fail to state that claim. *See* Am. Compl. at ¶¶ 49, 50. Plaintiffs do not allege that the unlawful ("trespassory") taking was committed with the requisite intent. *See* N.Y. Penal Law §§ 155.05(1) (the "intent to deprive another of property or to appropriate the same to himself or ot a third person"). Furthermore, "an assertion that 'property was appropriated under a claim of right made in good faith' is a defense to larceny." *People v. Reid*, 69 N.Y.2d 469, 515 N.Y.S.2d 750 (1987) (quoting N.Y. Penal Law § 155.15(1)). *See also People v. Chesler*, 50 N.Y.2d 203, 209-10, 428 N.Y.S.2d 639 (1980) (clarifying that a claim of right is an ordinary defense, not an affirmative defense, in a larceny prosecution). A court ordered foreclosure subsequent to liquidation proceedings provides the liquidator, and ABN-AMRO, with such a claim of right. *See e.g. People v. Teplitz*, 27 A.D.2d 891, 277 N.Y.S.2d 843, 844 (3d Dep't 1967) ("where the defendant had some legal basis for claiming title (chattel mortgage in default) to the property . . . the issue of intent to deprive the alleged owners thereof is a *non sequitur*").

Regardless of the confused nature of the "trespassory taking" claim, the conduct complained of was committed by the court appointed liquidator of Commodities and Holdings. *See* Am. Compl. at ¶ 50. ABN-AMRO did not direct the actions of the liquidator when he permitted another creditor to foreclose on the property in Givatim. By the Plaintiffs' own admission, the *Israeli court* gave ABN-AMRO permission to liquidate and sell Holdings' property in Jaffa. *See id.* It is the Israeli court, and the Liquidator appointed by that court, who bear responsibility for the actions complained of (whether theft, trespass, conversion, or some other act), not ABN-AMRO.

CONCLUSION

For the reasons stated the motion to dismiss is granted on all claims. Plaintiffs have amended their complaint twice, once without the permission of the Court. Plaintiffs now request leave to amend their complaint a third time. However, Fed. R. Civ. P. 15(a) does not permit amendment when there has been "repeated failure to cure deficiencies by amendment previously allowed." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Having failed to cure the deficiencies in two previous amendments, leave to further amend the complaint is denied.

/s/ Shira A. Scheindlin
SHIRA A. SCHEINDLIN
U.S.D.J.

Dated: New York, New York
December 1, 1995

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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94 Civ. 8390 (SAS)

RED ROCK COMMODITIES, LTD.,
RED ROCK HOLDINGS, LTD.,
Plaintiff

VS.

ABN-AMRO BANK N.V.,
Defendants.

SECOND AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

Plaintiffs Red Rock Commodities, Ltd. and Red Rock Holdings, Ltd., by their attorneys Gallet Dreyer & Berkey, LLP, as for their Second Amended Complaint, respectfully allege:

1. Red Rock Commodities, Ltd. ("Commodities") is a United States corporation, duly organized under the laws of the State of Delaware and with a principal place of business in New York, New York. At all relevant items herein, Commodities has been engaged in international commodities transactions.

2. Red Rock Holdings, Ltd. ("Holdings") is a United States corporation, duly organized under the laws of the State of Delaware and with a principal place of business in New York, New York. At all relevant times herein, Holdings has been engaged in real estate and business ventures.

3. ABN-AMRO Bank N.V. was and still is a banking corporation organized and existing under and pursuant to the laws of the Netherlands with its principal place of business in Netherlands and maintaining an office in New York, New York ("the Bank").

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332 (a) because the action is between a citizen of a foreign state and a citizen of a state and because the amount in controversy exceeds the sum of $50,000.

5. Venue lies in the Southern District of New York under 28 U.S.C. § 1332 (a) because the plaintiffs reside in this judicial district.

THE FACTS

6. In connection with international commodities transactions, trading companies, such as Commodities, rely upon banks to provide financing in the form of credit facilities.

7. By Promissory Note ("Note"), Security Agreement ("Security Agreement") and Terms and Condition Agreement ("Terms Agreement") dated June 1, 1990, annexed hereto as Exhibits "A", "B", and C, respectively, documents all drafted by the Bank, the Bank opened up a 15 million dollar credit faciilty in Commodities' favor, including for the financing of commodities, which required that Commodities make timely interest payments on any funds borrowed. The Note provided that it was due and payable ". . . on DEMAND, *or, if not* [*sic*] *such agreement is reached and no demand is made, five years from the date hereof*" (emphasis added), i.e., June 1, 1995. Exhibit "A", p.1. Both the Note and the Security Agreement expressly provided that the loan transaction, "shall be governed and construed in accordance with the law of the State of New York.' *See* Exhibit "A", p. 2; Exhibit

"B", p. 5. Likewise, the Terms Agreement provided in pertinent part:

> This agreement shall become effective upon being executed by the undersigned and it and the rights and obligations of the Bank and of the undersigned hereunder shall be governed by and construed in accordance with the laws of the State of New York. Any suit, action or proceedings against the undersigned with respect to the agreement may be brought in the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York and the undersigned hereby irrevocably submits to the jurisdiction of such courts for the purpose of any such suit, action, or proceeding. . . .

Exhibit "C", pp.3-4. The loan documents were executed by the parties in New York. Thereafter, Commodities made timely interest payments as they became due to the Bank, in United States dollars, to the New York branch of the Bank.

8. Holdings was not a party to the Note or Agreement.

9. Beginning in November, 1990, Commodities entered into an arrangement to provide steel billets manufactured in Poland to Ram Metals and Construction Industries, Ltd. ("Ram"), in Israel. Pursuant to the arrangement, any payment which was due the steel exporters in Poland and any shipping or related charges would be remitted by or paid for on behalf of Commodities, and the subject steel would be delivered in Israel for release to Ram upon payment as agreed between the parties ("Steel Billet Transactions").

10. In furtherance of the agreement between Commodities and Ram, substantial quantities of steel billets were purchased by Commodities from exporters in Poland, arrangements were then made for shipment of the steel

by ocean vessel to Israel, and original bills of lading for the steel were issued by the exporters to Commodities.

11. In order to support the Steel Billet Transactions, Commodities obtained financing from several lenders, including use of a portion of its $15 million dollar credit facility with ABN-AMRO Bank—New York, to whom the original bills of lading were assigned as collateral security for repayment of the bank financing.

12. In August of 1992, Commodities discovered that nearly $35 million dollars of steel billets, which were the subject of the Steel Billet Transactions, were either fraudulently consumed or disposed of by Ram in violation of the agreement between Ram and Commodities. At that time, ABN-AMRO Bank had extended Commodities approximately $10 million dollars to finance Steel Billets Transactions for Ram, although no Demand for payment of the principal balance had been made under the Note.

13. At considerable expense, Commodities immediately initiated steps to preserve and protect its position and interests.

14. Commodities provided its lenders with information concerning Ram, the obligations due Commodities, the security available to protect Commodities' position in the assets of Ram, the persons who might be liable for damages based on conduct detrimental to Commodities or its lenders, and other information concerning the activities of Commodities.

15. Part of Commodities' plan to protect its interests was to make application to an Israeli court that Commodities' attorney be appointed *receiver* for Ram in order that Ram could continue to operate—albeit under new management and control—to generate profits to repay the steel loan. Commodities was Ram's largest secured creditor and was owed approximately $35 million. Under Israeli law, it is customary to appoint the largest secured creditor of a troubled corporation as receiver.

16. Prior to appearing in the Israeli Court, Commodities' President, Menachem Pri-Har, fully discussed Commodities' plan to apply for receivership with its lending banks, including with Paul Feldman, a Vice-President of ABN-AMRO Bank. All lenders were supportive of Commodities' plan, including Feldman who represented that he, too, concurred with Commodities strategy for its appointment as receiver of Ram.

17. At a hearing before the Israeli Court on or about August 23, 1992, ABN-AMRO Bank, without prior warning to Commodities, sent its own attorney, Attorney Rosovsky, of the law firm Zadok, Striks, Sella & Co., Tel Aviv, Israel, to the court proceeding regarding Ram. The Bank failed to support Commodities request to be appointed receiver of Ram and asserted its own claims against Ram based upon the Bank's loan to Commodities —even though the Bank had not entered into any contract with Ram, and even though Commodities had fully performed all of its obligations under the Note and Security Agreement with the Bank, including its making timely interest payments as they became due.

18. Although the Israeli court was initially favorably disposed to Commodities' plan to keep Ram operating through appointment of a *receiver*, especially since Commodities was Ram's largest secured creditor, it quickly changed its view as a result of the apparent dissention among the creditors caused by the conduct of ABN-AMRO Bank. As a direct result of ABN-AMRO Bank's conduct, the court denied Commodities' application to be appointed as receiver of Ram, and ultimately appointed another creditor's counsel, Maritime Bank, to assist in liquidating Ram.

19. By letter dated August 27, 1992, Commodities' President, Mr. Pri-Har, complained to Paul Feldman of ABN-AMRO Bank that the bank's conduct at the Israeli court hearing seriously harmed Commodities' interests. A copy of this letter is annexed hereto as Exhibit "D".

20. As a result of the ultimate liquidation of Ram, Commodities' ability to protect and prosecute its interests in relation to Ram has been seriously prejudiced and harmed. ABN-AMRO's conduct, which caused Ram's *liquidation*, precluded Ram's loans being repaid by profits generated from Ram's continued operation under receivership as proposed by Commodities, thus making it impossible for Commodities to receive payment from Ram and, in turn, to continue to fully perform its obligation under the Loan Agreement with the Bank.

21. Subsequently, in June of 1993, ABN-AMRO Bank of New York, through its counsel, Ilan Shavit, also of Zadok, Striks, Sella & Co., made application to the Israeli Court for appointment as Interim Liquidator of both Commodities and Holdings, even though Holdings had no agreement nor involvement with the Steel Billet Transaction and no indebtedness to the Bank, nor any other bank; Commodities and Holdings were United States Corporations with their principal place of business in New York; the parties' (the Bank and Commodities) Note and Agreement specified that its loan transaction would be governed by New York law and that any litigation must be commenced in either New York state or federal courts; and, the Bank had not made any Demand for payment as required by the Note, and thus, the Note was still not due and payable until June 1, 1995.

22. Except for its application for appointment as temporary liquidator in Israel, the Bank had not, and has not, filed any suit against Commodities, nor has it obtained any judgment against Commodities.

23. Except for its application for appointment as temporary liquidator in Israel, the Bank had not, and has not, filed any suit against Holdings, nor has it obtained any judgment against Holdings.

24. At the hearing before the Israeli Court in June, 1993, ABN-AMRO Bank, through its counsel, Attorneys

Rosovsky and Shavit, improperly argued numerous points to the court, including, among other things: that Holdings was also involved in the Ram steel loan transaction and had obligated itself to the Bank on loan documents even though it knew that Holdings was not in any way indebted to the Bank; that Commodities' and Holdings' primary assets were located in Israel and thus it was appropriate for an Israeli court to appoint an Interim Liquidator even though it knew Commodities' and Holdigns' principal place of business and principal assets were in the United States; that Commodities was in violation of the parties' agreement and was justly indebted to ABN-AMRO Bank even though it knew that Commodities was not in violation of the agreement and that it had fully performed thereunder, including its making timely interest payments until and but for the Bank's improper conduct described above, and the Bank had not made any demand as required by the Note and thus Commodities was not so indebted; that Holdings and Commodities were insolvent even though they were not insolvent; and, that it would be appropriate for an Israeli court to accept jurisdiction and apply Israeli law in resolving the parties' dispute and appointing the Bank's representative as an Interim Liquidator, even though the parties' contract provided that New York law governed the transaction and the proper forum and venue for any dispute was in New York state or federal courts, and the Bank knew that New York law would *not* have permitted the liquidation of either Commodities or Holdings.

25. As a result of these and other misrepresentations by the Bank, the Israeli court accepted jurisdiction of the dispute and applied Israeli law—in violation of the forum and choice-of-law clause in the parties' agreement which required that New York law govern and that any dispute be litigated in New York courts—appointing Mr. Shavit as an Interim Liquidator of Commodities and Holdings in Israel on or about June 6, 1993, thereby further harm-

ing Commodities' and Holding's ability to fully protect their interest and preserve their assets abroad.

26. Upon information and belief, the Bank, through its counsel, knowingly and willfully avoided litigating any dispute in the United States, where it knew Commodities' and Holdings' interests would be more rigorously protected under New York law as required by the parties' agreement, and that liquidation of Commodities or Holdings under the circumstances would have been impossible under New York law, and thus filed its action for liquidation in Israel where it knew it was comparatively very easy for a bank to obtain the liquidation of a corporation.

27. Subsequently, the Bank attempted to complete its total circumvention of New York law through the actions of its counsel, Mr. Shavit, whom the Israeli Court appointed as an Interim Liquidator of Commodities and Holdings ("the Petitioner"), by the filing of a Petition in a Case Ancillary to Foreign Proceedings on September 25, 1994, pursuant to 11 U.S.C. § 304, *In re: Petition of Ilan Shavit as Interim Liquidator of RED ROCK COMMODITIES, LTD. and RED ROCK HOLDINGS, LTD.*, United States Bankruptcy Court, Souther District of New York, No. 94-B-44586 (Bernstein, B.J.), seeking, among other things, in aid of the Israeli Court appointment of Mr. Shavit as Interim Liquidator, the turnover of all property of Commodities and Holdings within this country, and the substitution of Mr. Shavit as a party plaintiff in all legal proceedings initiated by Commodities and Holdings around the world, including within this country. The bankruptcy action is pending.

FIRST CLAIM

(Breach of Express Terms of Contract)

28. Commodities repeats and realleges paragraphs 1 through 27, above, as if fully set forth herein.

29. By its conduct fully described above, ABN-AMRO Bank knowingly and willfully violated Commodities' existing rights under the express terms of the Note and Security Agreement by:

(a) Instituting the liquidation action in Israel, even though the Note and Security Agreement required that the forum for any disputes arising under the Note and Security Agreement was in New York courts; and,

(b) urging the Israeli Court to apply Israeli law to appoint an Interim Liquidator for Commodities, even though the Note and Security Agreement required that the loan transaction was governed by New York law.

30. Commodities fully performed its obligations under the Note and Security Agreement, including its making timely interest payments as they became due, until and but for the Bank's improper conduct complained of herein.

31. As a direct and proximate result thereof, the Bank has caused and obtained the appointment of its own counsel as Interim Liquidator in Israel, thereby seriously damaging Commodities' ability to fully conduct and promote its business activities and to protect and preserve its financial interests and assets abroad, including Commodities' ability to repay the indebtedness incurred in relation to the Ram Steel Billet Transaction. By such conduct, ABN-AMRO Bank has violated the express terms of the parties' Note and Security Agreement.

32. By reason of the foregoing, this Court should award compensatory damages in the amount of not less than $100,000,000, punitive damages in like amount, plus attorney's fees and costs incurred to prosecute this action.

SECOND CLAIM

(Breach of Implied Covenant of Good Faith and Fair Dealing)

33. Commodities repeats and realleges paragraphs 1 through 32, above, as if fully set forth herein.

34. By its conduct fully described above, ABN-AMRO Bank has violated the covenant of good faith and fair dealing to Commodities by:

(a) interfering with Commodities' rights and ability to perform under the Note and Security Agreement by knowingly and wilfully misrepresenting that the Bank supported Commodities' application for receivership of Ram and then subsequently appearing in the Israeli court and asserting claims against Ram arising from the Note and Security Agreement, even though there was no default pursuant to the Note and Security Agreement, resulting in the Israeli court's ultimately liquidating Ram, which precluded Ram's loans being repaid by profits generated from Ram's continued operation under receivership as proposed by Commodities, thus making it impossible for Commodities to receive payment from Ram and, in turn, seriously interfering with and/or making it impossible to continue to fully perform its obligations to various lending banks (including ABN-AMRO Bank) to whom Commodities was collectively indebted in the amount of approximately $18 million, and resulting in Commodities' loss of its own working capital invested in the Ram Steel transaction;

(b) violating and interfering with Commodities' existing rights under the Note and Security Agreement by knowingly and wilfully misrepresenting that it would be appropriate for an Israel Court to accept jurisdiction and apply Israeli law in resolving the parties' dispute by appointing the Bank's representa-

tive as a Interim Liquidator of Commodities, even though the parties' contract expressly provided that New York law governed the transaction and that the proper forum and venue for any dispute was in New York state or federal courts, knowing full well that New York law would *not* have permitted the liquidation of Commodities under the circumstances;

(c) knowingly and willfully misrepresenting numerous facts to the Israeli court and thereby obtaining appointment of its counsel as Interim Liquidator of Commodities in Israel, including, among other things, that: Commodities was in violation of the parties' agreement and was justly indebted to the Bank, even though the Bank knew that Commodities was not in violation of the agreement and had fully performed thereunder until and but for the Bank's improper conduct described herein, and the Bank had not made any demand as required by the Note and thus Commodities was not so indebted; Commodities was insolvent, even though the Bank knew or should have known that Commodities was not insolvent; and, Commodities' principal assets were located in Israel and thus it was appropriate for an Israeli court to appoint an Interim Liquidator, even though Commodities' principal place of business and assets were in the United States;

(d) violating Commodities' rights under the contract by unreasonably instituting legal proceedings without first making any demand for payment as required by the Note; and,

(e) attempting to complete its total circumvention of New York law through the action of its counsel, Mr. Shavit, by the filing of an ancillary petition in the United States Bankruptcy Court pursuant to 11 U.S.C. § 304, seeking, in aid of the Israeli Court

appointment of Mr. Shavit as Interim Liquidator, the turnover of all property of Commodities and Holdings within this country, and the substitution of Mr. Shavit as a party plaintiff in all legal proceedings initiated by Commodities and Holdings around the world including within this country.

35. As a direct and proximate result thereof, the Bank, including through its counsel, has seriously damaged Commodities' ability to fully conduct and promote its business activities and to protect and preserve its financial interests and assets abroad, and will continue to damage Commodities' ability to conduct and promote its business activities and to protect and preserve its financial interests and assets at home and abroad, including its ability to repay the indebtedness incurred in relation to the Ram Steel Billet Transaction, and its loss of its own working capital in relation to the Ram Steel Billet Transaction.

36. By reason of the foregoing, this Court should award compensatory damages in the amount of $100,000,000, punitive damages in like amount, plus attorney's fees and costs incurred to prosecute this action.

THIRD CLAIM

(Fraud and Misrepresentation)

37. Commodities and Holdings repeat and reallege paragraph 1 through 36, above, as if fully set forth herein.

38. By its conduct fully described above, ABN-AMRO Bank knowingly and willfully made fraudulent misrepresentations, including misrepresentations by Paul Feldman that the Bank supported Commodities' application for *receivership* of Ram, upon which Commodities' relied and causing Commodities to proceed with its application for appointment as receiver of Ram, then subsequently ap-

pearing in the Israeli court and asserting its own claims against Ram based upon the Note and Security Agreement which were not then in default and by failing to support Commodities' application to be appointed receiver of Ram.

39. As a direct and proximate result thereof, the Israeli Court denied Commodities' application for appointment as receiver, and ultimately liquidated Ram. But for the Bank's conduct described above, the Israeli court would have granted Commodities' application for appointment as receiver of Ram because the court was initially favorably disposed to Commodities' plan to keep Ram operating through appointment of a receiver, especially since Commodities was Ram's largest secured creditor.

40. As a result of such conduct, the Bank seriously harmed Commodities' ability to fully conduct and promote its business activities and to protect and preserve its financial interest and assets abroad, including Commodities' ability to repay its indebtedness incurred in relation to the Ram Steel Billet Transaction. ABN-AMRO's conduct, which resulted in Ram's liquidation, precluded Ram's loans being repaid by profits generated from Ram's continued operation under receivership as proposed by Commodities, thus making it impossible for Commodities to receive payment from Ram and, in turn, to continue to fully perform its obligations under its Loan Agreement with the Bank, as well as its obligations to other lending banks.

41. The Bank's misrepresentations to Commodities that it would support Commodities' application for appointment as receiver of Ram were material and were relied upon by Commodities. Had Commodities known the Bank would *not* support its application for appointment as receiver of Ram, it would *not* have proceeded with its plan for appointment as receiver for Ram because such action might result in Ram's being liquidated, thereby

preventing Ram's continued operation and its repayment of its indebtedness to Commodities from ongoing profits. Instead, Commodities would have reached some other agreement or suitable accommodation with Ram for repayment of its indebtedness to avoid Ram's liquidation.

42. The Bank also fraudulently represented to Commodities, to induce it to enter into the Note and Security Agreement, that any dispute arising thereunder would be governed by New York law and be litigated in New York courts, as expressly provided in the Note and Security Agreement, and Commodities reasonably relied upon this material representation in entering into the Note and Security Agreement. As a result of its reliance upon the Bank's representations, Commodities has been seriously damaged, as fully described in Counts I and II, above, by the Bank's unauthorized institution of liquidation proceedings against it in Israel under Israeli law.

43. By reason of the foregoing, this Court should award compensatory damages in the amount of $100,000,000, including the amount of $35,000,000, representing Ram's indebtedness to Commodities which has still not been paid, including the loss of Commodities' own working capital invested in the Ram Steel Billet Transaction, and award punitive damages in a like amount, plus attorney's fees and costs incurred to prosecute this action.

FOURTH CLAIM

(Interference with Advantageous Business and Economic Relations)

44. Commodities and Holdings repeat and reallege paragraphs 1 through 43, above, as if fully set forth herein.

45. By its conduct fully described above, ABN-AMRO Bank, including through its counsel, knowingly and willfully interfered with Commodities' and Holdings' advan-

tageous business and economic relations, including their ability to fully conduct and promote thier business activities and to protect and preserve their financial interests and assets abroad.

46. In particular, the Bank, with knowledge of Commodities' contract with Ram and its (Commodities') intent to apply for appointment as receiver of Ram, Commodities being Ram's largest secured creditor, engaged in fraudulent conduct by misrepresenting to Commodities that it supported Commodities' application for appointment as *receiver* of Ram and then appearing at the Ram Israeli court proceeding and failing to support such appointment and instead asserted claims against Ram arising out of the Note and Security Agreement—even though the Bank had no contract with Ram and even though there was no default under those agreements. As a direct result of the Bank's conduct, the Israeli Court denied Commodities' application for appointment as receiver of Ram and ultimately liquidated Ram, thereby seriously harming Commodities' prospective economic advantage and interfering with Commodities' right to repayment of Ram's indebtedness under its contract with Ram. Ram's liquidation precluded Ram's loans being repaid by profits generated from Ram's continued operation under receivership as proposed by Commodities, thus making it impossible for Commodities to receive payment from Ram and, in turn, to continue to fully perform its obligations under its Loan Agreement with the Bank, as well as its obligations to other lending banks.

47. Regarding Holdings, the Bank, through its counsel, Mr. Shavit, appointed by the Israeli court as Interim Liquidator for Holdings, with knowledge of the existence of a property asset belonging to Holdings, intentionally and fraudulently interfered with an advantageous business relation and in particular, a real estate asset of Holdings, to wit: an office industrial building located at 31 Alufsade Street, Givatim, Israel, which Mr. Shavit permitted a

creditor, Bank Leumi, to foreclose upon, and further waived any of Holdings' rights to recourse, even though Holdings had fully performed under it loan agreement with Bank Leumi, resulting in Holdings' loss of this valuable asset. The Bank has also recently applied for, and obtained, on February 6, 1995, from the Israeli court, permission to liquidate and sell another office building belonging to Holdings located at Jerusalem Boulevard, Jaffa, Israel, which sale has not yet taken place.

48. By reason of the foregoing, this Court should award compensatory damages in the amount of $100,000,000, punitive damages in like amount, plus attorney's fees and costs incurred to prosecute this action.

FIFTH CLAIM

(Conversion and Trespassory Taking)

49. Commodities and Holdings repeat and reallege paragraphs 1 through 48, above, as if fully set forth herein.

50. By its conduct fully described above, ABN-AMRO Bank converted and unlawfully took property belonging to Commodities and Holdings as fully described above, including, but not limited to the office industrial building located at 31 Alufsade Street, Givatim, israel, which Mr. Shavit permitted a creditor, Bank Leumi, to foreclose upon, even though Holdings had fully performed under its loan agreement with Bank Leumi, resulting in Holdings' loss of this valuable asset. The Bank has also recently applied for, and obtained, on February 6, 1995, from the Israeli court, permission to liquidate and sell another office building belonging to Holdings located at Jerusalem Boulevard, Jaffa, Israel, which sale has not yet taken place. Further, Holdings was in no way indebted to the Bank under Commodities' Note and Security Agreement.

51. By reason of the foregoing, this Court should award compensatory damages in the amount of $100,000,000,

punitive damages in like amount, plus attorney's fees and costs incurred to prosecute this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court order the following relief:

(1) judgment be entered in favor of Commodities and against ABN-AMRO Bank in the amount of $100,000,000 on Claims 1, 2, 3, 4 and 5, respectively, for compensatory damages, and in like amount for punitive damages on each claim, plus interest accrued and accruing thereafter, plus other charges and expenses, including attorney's fees and the costs incurred to prosecute this action;

(2) judgment be entered in favor of Holdings and against ABN-AMRO Bank in the amount of $100,000,000 on Claims 4 and 5, respectively, for compensatory damages, and in like amount for punitive damages, plus interest accrued and accruing thereafter, plus other charges and expenses, including attorney's fees and the costs incurred to prosecute this action;

(3) declaratory judgment be entered declaring the rights and liabilities of the parties with respect to the forum and choice-of-law clause of the Note and Security Agreement, including a declaration that the Israeli court's appointment of the Bank's counsel, Ilan Shavit, as Interim Liquidator of Commodities and Holdings, was null and void because in contravention of the express terms of the Note and Loan Agreement, which required that New York law and New York courts govern any dispute of the parties, and restraining any further proceedings by the Bank or its counsel, Mr. Shavit, under the Israeli court's appointment of Mr. Shavit as Interim Liquidator of Commodities and Holdings; and

(4) such other relief as the Court may seem just and proper.

THE PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY ON ALL COUNTS OF THE COMPLAINT.

Dated: New York, New York
June 30, 1995

GALLET DREYER & BERKEY, LLP

By /s/ David L. Berkey
DAVID L. BERKEY
(DLB-0243)
A member of the firm
Attorneys for Plaintiffs
845 Third Avenue—8th Fl.
New York, NY 10022-6601
(212) 935-3131

EX. A

PROMISSORY NOTE

Grid—Offering Basis—Corporation

USD 15,000,000
(Amount of Facility)

New York, New York
June 1, 1990

FOR VALUE RECEIVED, Red Rock Commodities, Ltd. (the "Borrower"), a (corporation) (partnership) organized and existing under the laws of Delaware, hereby promises to pay to the order of Algemene Bank Nederland N.V., New York Branch (the "Bank"), in lawful money of the United States of America, in care of its New York office located at 335 Madison Avenue, New York, New York 10017, on the date or dates agreed to by the Borrower and the Bank in accordance with the provisions thereof, or, if no such agreement is reached, ON DEMAND, or, if not such agreement is reached and no demand is made, five years from the date hereof, the principal sum of Fifteen Million or, if less, the unpaid principal amount of all loans or advances (hereinafter, "Loans") made by the Bank to the Borrower or in accordance with its instructions.

The Borrower promises also to pay interest on the unpaid principal amount hereof in like money at said office from the date hereof at such rates as shall be agreed upon from time to time between the Borrower and the Bank, such interest to be payable on the last business day of each calendar month, commencing on the first such date to occur after the date hereof, at maturity, after maturity on demand, and on the date of any payment herein on the amount paid. The Borrower acknowledges that interest rates and maturity dates are ordinarily negotiated between the Borrower and the Bank by telephone and agrees that in the event of any dispute as to any applicable interest rate and/or maturity date, the determination of the Bank and its respective entry on the

schedule hereinafter referred to shall be conclusive and binding upon the Borrower. Unless otherwise specifically agreed, interest will be calculated on the bank basis, that is, on the basis of the actual number of days elapsed divided by 360.

Demand of payment of this Note shall be sufficiently made upon the Borrower by written, telex, telegraphic or telephonic notice given by or on behalf of the Bank to the Borrower at its last known address. The Borrower hereby expressly waives presentment, protest and other demand or notice of any kind. No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof.

At the time of the making of each Loan and at the time of each payment of principal thereon, the holder hereof shall make a notation on the schedule annexed hereto of the date and amount of the related Loan or payment, as the case may be, and, in the case of a loan, of the interest rate applicable thereto and the maturity date thereof (such maturity date to be noted as "ON DEMAND" or a specific date, which date shall be a business day and shall be not more than ninety days form the date of the Loan to which it relates); provided, however, that the failure to make such a notation with respect to any Loan shall not limit or otherwise affect the obligation of the Borrower hereunder with respect to such Loan or any other obligation of the Borrower relating to such Loan, and payments of principal hereon by the Borrower shall not be affected by the failure to make a notation thereof on said schedule. Despite the date of this Note, interest hereon shall be payable only from the dates of the respective Loans evidenced hereby and despite the stated amount hereof, this Note shall be enforceable, with respect to the Borrower's obligation to pay the principal amount hereof, only to the extent of the unpaid aggregate amount of Loans made by the Bank.

The Borrower shall have the right to prepay this Note in part (or integral multiples of $100,000) or in full at

any time without any premium or penalty. Each prepayment of principal shall be accompanied by payment in full of all interest accrued on the amount so prepaid.

This Note shall be governed by and construed in accordance with the law of the State of New York.

RED ROCK COMMODITIES, LTD.

Type or Print Name of Borrower

By /s/ [Illegible]

Title Executive Vice President

EX. B

SPECIFIC SECURITY AGREEMENT

New York, New York
June 1, 1990
(Date)

Algemene Bank Nederland N.V.
335 Madison Avenue
New York, New York 10017

Gentlemen:

In order to induce you (hereinafter called the "Bank") to extend or to continue to extend credit, from time to time, to Red Rock Commodities, Ltd. *(Insert name of Borrower)*, a corporation having an office at 475 Montauk Highway, West Islip, N.Y. *(Insert location of Borrower's principal office)* hereinafter called the "Borrower"), and to supplement the Terms and Conditions dated ———— ———— *(Insert date of Terms and Conditions)* between the Bank and the Borrower, the Borrower hereby represents and agrees with the Bank as follows:

1. Subject to the terms and provisions of this agreement, the Bank will henceforth make or continue loans to the Borrower as the Bank elects, from time to time. In consideration of the receipt or continuation of such loans and as security for the payment of all liabilities to the Bank, the Borrower hereby assigns and grants to the Bank a security interest in the following described property, hereinafter called "Collateral".

2. Definitions: as used herein:

   (a) *"Collateral"* means all personal property of the Borrower, wherever located, now owned or in existence or hereafter acquired or created, which is, or shall be financed by the Bank or is in, or shall come into the Bank's possession or

control, including, without limitation, inventory, farm products, equipment, documents (including any documents made available to the Borrower pursuant to trust receipts or other security agreements) and accounts receivable, and the products and proceeds thereof, together with all improvements and additions thereto, whether same be money, deposits, accounts, chattel paper, instruments, notes, securities, bonds, drafts, acceptances, contract rights, general intangibles or proceeds of insurance.

(b) "*Liabilities*" means all indebtedness, obligations and liabilities of the Borrower to the Bank of every kind and description, direct or indirect, absolute or contingent, due to or to become due, contractual or tortious, now existing or hereafter arising, including without limitation liabilities as a guarantor or endorser, regardless of how they arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument.

(c) "*Inventory*" means goods, merchandise and other personal property now owned or hereafter acquired by the Borrower, including but not limited to *(insert description of primary line(s) of merchandise)*:

which are held for sale or lease or being processed for sale or lease in Borrower's business as now or hereafter conducted, including without limitation all materials, goods in process and finished foods, as well as supplies customarily classified as inventory.

(d) "*Accounts Receivable*" means accounts, notes, drafts, acceptances and other forms of obligations and receivables owing to the Borrower. The Borrower hereby represents and warrants as to each Account Receivable, as so defined,

that it meets (if now existing) or will meet (if hereafter arising) the following specifications at its inception and will continue to meet the same until it is collected in full.

(1) It represents a bona fide money obligation of the obligor (the "account debtor") owing to the Borrower in the amount stated to the Bank.

(2) The account arises from a bona fide sale or lease of goods to, or performance of services for, the account debtor by the Borrower.

(3) The account is not subject to any assignment, claim, lien or security interest of any character except the security interest of the Bank and is not subject to any claim for credit, set-off, allowance or adjustment, or counterclaim of any person.

(4) No notice of bankruptcy, insolvency or adverse change in the financial condition of the account debtor has been received by the Borrower.

3. The Borrower shall furnish the Bank information adequate to Inventory, Accounts Receivable, Contract Rights and other Collateral financed, or being financed, by the Bank at such times and in such form and substance as may be requested by the Bank, including but not limited to title documents and/or trust receipts. The Borrower will also, upon request, deliver to the Bank shipping and delivery receipts evidencing the shipment of goods and invoices evidencing the receipt of, and payment for, all Inventory. All balance sheets, earning statements and other financial data which have been or may hereafter be furnished to the Bank to induce it to enter into this agreement or in connection herewith, do or shall fairly represent the financial condition and operations of

the Borrower as of the dates and for the periods shown thereon and all other information, reports, papers, and data furnished to the Bank are or shall be, at the time furnished, accurate and correct in all material respects and complete insofar as completeness may be necessary to give the Bank a true and accurate knowledge of the subject matter. The Borrower will not sell, encumber, or otherwise dispose of Collateral except in the ordinary course of business without the written consent of the Bank.

Without the prior written consent of the Bank the Borrower will not file or authorize or permit to be filed in any jurisdiction any financing statement or like statement in which it is named a debtor and the Bank is not named as the secured party. The Borrower hereby authorizes the Bank at the Borrower's expense to file any financing statement deemed necessary by the Bank to perfect the security interests herein specified, and to sign the same in the name and on behalf of the Borrower as attorney-in-fact, if necessary. A carbon, photographic or other reproduction of this agreement or any financing statement signed as provided above shall be sufficient as a financing statement for such filing purposes as the Bank may deem necessary.

At any time and from time to time, upon the demand of the Bank, the Borrower will also deliver and pledge to the Bank, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Bank may request, any and all instruments, securities, documents and/or chattel papers as the Bank may specify in its demand.

4. The Borrower will, at all times, maintain at 475 Montauk Highway, West Islip, N.Y. *(Insert precise address of Borrower's office or principal place of business)*, which the Borrower hereby represents to be the location of its sole place of business or, if it has more than one place of business, its chief executive office, accurate books

and records covering the Collateral. Immediately upon the execution of this agreement, the Borrower will mark all such books and records with an entry showing the absolute assignment effected hereby and the Bank hereby is given the right and privilege of auditing the books and records of the Borrower relating to said Collateral and to inspect the Collateral at any time, and from time to time as the Bank deems proper.

5. Except for the security interest granted hereby and by the Terms and Conditions the Borrower is, and as to Collateral hereafter becoming such, shall be, the owner of the Collateral free from any lien, security interest or encumbrance, and the Borrower shall defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein adverse to the Bank's.

6. The Borrower shall give the Bank written notice of each office of the Borrower at which records pertaining to Collateral are or will be kept, of each location at which inventory is or will be kept, of each location of its sole place of business or chief executive office, and of any change in said office, offices, place of business, location or locations. Except as such notice is given, all records of the Borrower pertaining to accounts and contracts are and shall be kept and the location of all inventory is and shall be at the Borrower's sole place of business or chief executive office as set forth in paragraph 4 hereof.

If at any time the Collateral shall be unsatisfactory to the Bank, upon the demand of the Bank, the Borrower will furnish such further security or make such payment on account of the Liabilities as will be satisfactory to the Bank.

7. The Borrower shall be in default under this agreement and the Terms and Conditions upon the happening of any one of the following events or conditions:

(a) There shall be a default in the due and punctual discharge of any liability or other obligation, hereunder or otherwise, to the Bank or, unless being contested in good faith as determined by the Bank, any other creditor or supplier of the Borrower;

(b) Any wararnty, representation or statement made or furnished to the Bank by or on behalf of the Borrower, herein or otherwise, proves to be false or incorrect in any material respect; or in any event described in section VI of the Terms and Conditions shall have occurred;

(c) The Borrower shall fail to keep the Collateral fully insured, with proceeds of insurance payable to the Bank, without prior written consent of the Bank; or

(d) The making or sending Notice of any intended bulk sale of the business of the Borrower shall occur.

Upon such default and at any time thereafter, (a) the Liabilities shall become immediately due and payable without notice, demand of payment or presentment, all of which are hereby expressly waived, and (b) the Bank may proceed to enforce payment of the same and exercise any and all of the rights and remedies provided by the Uniform Commercial Code, the Terms and Conditions and all other rights and remedies possessed by the Bank. The Bank shall be entitled to the immediate possession of the Collateral and all books and records pertaining thereto at such place or places as the Bank may specify, and it shall have the authority to enter upon any premises on which the same may be situated and remove the same therefrom. The Bank may at any time, in its discretion, transfer any of the Collateral or evidence thereof into its own name or that of its nominee and receive the proceeds therefrom and hold the same as security for Liabilities

or apply it on principal or interest due thereon and/or it may, without advertisement, sell at public or private sale, grant options to purchase or otherwise realize upon, the whole or any part of the Collateral. If notice of any sale or other disposition is required by law to be given, the Borrower hereby agrees that a notice sent to the Borrower's last known business address by ordinary mail at least ten business days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made, shall be reasonable notice of such sale or other disposition. The Bank may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize upon Collateral, in its own name or in the name of the Borrower, as the Bank may determine. The Bank shall not be liable for the failure to collect any account or enforce any contract right or general intangible or for any act or omission on the part of the Bank, it officers, agents or employees, except for willful misconduct.

With respect to the Collateral, the Bank shall be under no duty to send notices, perform services, vote, pay for insurance, taxes or other charges or take any action of any kind in connection with the management thereof and its only duty with respect thereto shall be to use reasonable care in its custody and preservation while in its possession, which shall not include any steps necessary to preserve rights against prior parties.

8. The Borrower shall be liable for and agrees to pay to the Bank any and all expenses incurred or paid by the Bank in protecting or enforcing its rights under this agreement, including but not limited to attorneys' fees and expenses, and such expenses shall be "Liabilities" as defined herein. The rights and duties of the parties hereto shall be cumulative of and not in substitution for or exclusive of the rights and duties incurred under the Terms and Conditions; said Agreement and this agreement shall be construed together and read as one single agreement, each being hereby incorporated into the other

by reference. Each shall be read consistently with the other unless the context otherwise clearly requires. In any case of irresolvable conflict, the terms of this agreement shall prevail.

9. No waiver by the Bank of any default shall operate as a waiver of any other default and the terms of this agreement shall be binding upon the legal representatives, administrators, successors, and assigns of the parties hereto.

10. Unless hereinbefore specified to the contrary all notices may be given by leaving same at the address given herein or any other address hereafter filed with the Bank, or by mailing same to such address with the same effect as if delivered to the Borrower personally. Such notice given in the manner herein provided shall be effective whether or not received by the Borrower.

11. This agreement shall be construed in accordance with and governed by the laws of the State of New York, without regard to its principles of choice of law or conflicts of law. Unless the contest otherwise requires all terms used herein shall have the meaning specified in the Uniform Commercial Code as in effect on the date hereof in the State of New York.

Signed and delivered the day and year first above written.

RED ROCK COMMODITIES, LTD.

Name of Borrower

By /s/ [Illegible]
Authorized Signatory

ACCEPTED AND AGREED:

ALGEMENE BANK NEDERLAND N.V.
NEW YORK BRANCH

By /s/ [Illegible] By /s/ [Illegible]

EX. C.

TERMS AND CONDITIONS

Algemene Bank Nederland N.V.
335 Madison Avenue
New York, NY 10017

In consideration of loans or other financial accommodations given or to be given, or continued, to the undersigned by Algemene Bank Nederland N.V. (hereinafter called the "Bank"), including acceptance by the Bank or any of its correspondents of any draft or drafts drawn on the Bank or on any of its correspondents by the undersigned or by persons designated in writing by the undersigned, the undersigned hereby agree(s):

1. The Term "liabilities" as herein used shall include all liabilities of any kind of the undersigned, whether direct or contingent, joint or several, or joint and several, secured or unsecured, now or hereafter existing, due or to become due to, or held by, the Bank for its own account or as agent for another or others, whether created directly or acquired by assignment or otherwise, including, without limiting the generality of the foregoing, liabilities to the Bank of the undersigned as a member of any partnership, syndicate, association or other group, incurred as a result of the Bank's acting upon the instructions of the undersigned, whether delivered in person or by telephone, orally or in writing, or the Bank's acting as a guarantor to procure the release of goods shipped or released to the undersigned or others, or, arising by operation of law, by contract or in tort, whether such liabilities are liquidated or unliquidated, at law, in equity, and whether hereto or hereafter incurred or given by the undersigned as principal, surety, endorser, guarantor, accommodation party or otherwise.

The term "collateral" as herein used shall include:

(a) the balance of every account of the undersigned with the Bank and any other claim of the undersigned against the Bank, now or hereafter existing, and all money, instruments, securities, documents (including the goods covered thereby), chattel paper, credits, claims, demands, or any interest in any thereof, and any other property, rights and interests, of the undersigned, or any evidence thereof, which at any time shall come into the possession or custody or under the control of the Bank or any of its agents, associates, branches or correspondents, for any purpose, whether or not accepted for the purpose or purposes for which they are delivered or intended, and shall include any of the foregoing from time to time made available to the undersigned by the Bank pursuant to a trust receipt or other security agreement the effect of which is to continue the Bank's security interest therein and shall also include the proceeds, products and accessions of and to each of the foregoing, and the Bank shall be deemed to have possession, control or custody of any of the collateral actually in transit to or set part for it or any of its agents, associates, branches, affiliates, correspondents or others acting in its behalf; and

(b) all substitutions for the properties, rights and interests described in (a) above, all additions thereto (including without limitations all cash and dividends and other distributions and all rights, privileges and options relating to, declared or granted in connection with such property) and the products and proceeds thereof.

The term "undersigned" as herein used shall mean the parties who have signed this agreement and each of them.

II. Unless otherwise agreed in writing all liabilities shall bear interest (a) if the undersigned is a corporation or if the aggregate amount of all liabilities is equal to or greater than $250,000, or its equivalent, at the rate of 25% per annum, and (b) otherwise, at the rate of 16%

per annum (or, if less, at the maximum rate per annum permitted by applicable law) to the date of payment and shall be payable, upon demand, in lawful money of the United States at the Bank's principal place of business in New York City. The Bank may, but shall not be obligated to, charge such lower rate of interest as it may, in its discretion, deem acceptable. Acceptances payable in United States currency shall be paid at the Bank's principal place of business in New York City at maturity in same day funds.

The undersigned will also pay all commissions payable to the Bank and all charges and expenses paid or incurred by the Bank in connection with loans, acceptances, collections or other financial accommodations, plus correspondents' charges, if any.

III. As security for the payment of any and all the liabilities the undersigned hereby grant(s) to the Bank a security interest in and a general lien upon and/or right of set-off of the collateral. The right is herewith expressly granted to the Bank, at its option, at any time and from time to time, without notice, to transfer or cause to be transferred to, or registered in the name of, itself or its nominee(s), any and all stocks, bonds and other securities and property included in the collateral, and, whether or not so transferred or registered, to receive any and all income and dividends thereon, including stock-dividends and rights to subscribe, and to hold the same as a part of the collateral and/or to apply it to the reduction or liquidation of any of the liabilities, at its discretion to exchange all or any of the collateral for other property upon reorganization, recapitalization or other readjustment of any corporation and in connection with any such reorganization, recapitalization or readjustment to deposit all or any of the collateral with any committee or depositary upon such terms and conditions as it may determine, after such transfer or registration, to vote or cause its nominee(s)

to vote all or any of such stocks, bonds and securities, and to exercise or cause its nominee(s) to exercise all or any powers with respect to any stocks, bonds or other securities or property forming a part of the collateral, with the same force and effect as an absolute owner thereof, all without notice and without notice and without liability to any person except to account for property actually received by it. The Bank may at its option remove any and all of the collateral from the state or country in which it may at any time be held to any other state or country, and it may there be dealt with by the Bank as provided in this agreement.

IV. This agreement is a "security agreement" within the meaning of the Uniform Commercial Code. The undersigned hereby:

(a) authorizes the Bank to file this agreement or any statement, instrument, document, amendment or other paper, without the signature of the undersigned, in all public offices as the Bank in its sole discretion may deem necessary to create, preserve, perfect or validate any lien or security interest or to enable the Bank to exercise or enforce its rights with respect to such lien or security interest and agrees to pay the cost of filing or recording the same and all other costs and expenses in connection with the custody, care, preservation, perfection or collection of the collateral;

(b) undertakes to execute and deliver or file at the request of the Bank any statement, instrument, document or other paper in such form and substances as the Bank may request in order to create, preserve, perfect or validate any lien or security interest or to enable the Bank to exercise or enforce its rights with respect to such lien or security interest;

(c) undertakes to deliver as part of this agreement a list of all financing statements or security agreements relating to any of the undersigned's property executed

prior to the execution and delivery of this agreement and which are in effect at the time of such execution and delivery;

(d) so long as any liability of the undersigned to the Bank remains outstanding the undersigned undertakes to deliver a written notice to the Bank promptly upon and contemporaneously with the entering into of any security agreement with or execution of any financing statement in favor of a party other than the Bank.

V. The Bank may, in its discretion, whether or not any of the liabilities be due, apply any amount(s) which may be received or held by it hereunder at any time(s) to the payment or reduction, either in whole or in part, of the principal and/or interest (as the Bank may elect) then owing on any or all of the liabilities, in its name and/or in the name of anyone for whom it has acted or shall act as agent in connection with any such liability. In cases where the Bank undertakes to collect any instrument for the account of the undersigned, the Bank shall comply with Section 4-202 of the Uniform Commercial Code. The Bank shall not otherwise be bound to take any steps to preserve any rights against prior parties in any of the property or documents of the undersigned, all of which the undersigned undertakes to do. Except as hereinabove provided, as to all instruments, documents or other property delivered by or on behalf of the undersigned to the Bank, whether for security hereunder, collection or other disposition, the Bank shall not be responsible for: (a) any loss, cost or expense incurred in connection therewith; (b) any default, neglect, malfeasance, suspension or insolvency of any correspondent or agent to whom any document, draft or other obligation may be entrusted for any purpose whatsoever, (c) any loss or delay in transmission or otherwise of any such document, draft or obligation or of the proceeds thereof; (d) any error, omission, interruption or delay in the

transmission or delivery of any pertinent message, by mail or otherwise; or (e) any loss in exchange or loss of interest. In addition, even though not obligated to do so, the Bank may (1) demand, sue for, collect or receive any money or property at any time due, payable or receivable on account of or in exchange for any obligation securing any of the liabilities of the undersigned, (2) compromise and settle with any person liable on such obligation, and (3) extend the time of payment or otherwise change the terms thereof, as to any party liable thereon, all of the foregoing without incurring responsibility to the undersigned or affecting any of the liabilities of the undersigned. The Bank may, but is not obligated to, exercise any or all rights to conversion or exchange or similar rights, privileges and options relating to the collateral. In the event that the undersigned requests the Bank to act upon oral or telephonic instructions, the undersigned agrees that it shall indemnify and hold harmless the Bank and its officers and employees from and against any losses as a result of its acting or refraining from acting upon the oral instructions furnished to it hereunder which are believed by it to be genuine.

VI. Upon non-payment when due of any of the liabilities of the undersigned, or in case the Bank deems itself insecure, or upon failure of the undersigned to keep any property of the undersigned adequately covered by insurance satisfactory to the Bank, or if it appears at any time that any representation in any financial or other statement of the undersigned, delivered to the Bank by or on behalf of the undersigned, is untrue or omits any material fact, or if an adverse change shall occur in the financial condition of the undersigned, or if the undersigned or any endorser or guarantor of any of the liabilities of the undersigned shall die or (being a partnership or corporation) shall be dissolved or shall become insolvent (however evidenced), or upon the suspension of business of the undersigned, or upon the undersigned or any partner of

the undersigned (if a partnership) being expelled from or suspended by any securities or commodity exchange, or upon the issuance of any warrant, process or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the undersigned, or upon the commencement of any proceeding under, or the use of any of the provisions of, the New York Civil Practice Law and Rules or the analogous provisions of the law of any other jurisdiction by any judgment creditor of the undersigned or with respect to any property of the undersigned, or upon the making by the undersigned or any endorser or guarantor of any of the liabilities of the undersigned of an assignment for the benefit of creditors, or upon a trustee or receiver being appointed for the undersigned or any endorser or guarantor of any of the liabilities of the undersigned or for any of the property of the undersigned, or upon any proceedings being commenced by or against the undersigned or any endorser or guarantor of any of the liabilities of the undersigned under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute, then, and in any such event, (a) all liabilities shall become at once due and payable, without notice, presentment or demand of payment, which are hereby expressly waived, and (b) the Bank shall have the right, from time to time, without advertisement, demand upon or notice to the undersigned, or right of redemption by the undersigned except as shall be required by applicable statute and cannot be waived, at its option to sell, re-sell, assign, transfer and deliver all or any part of the collateral, at any brokers' board or exchange or at public or private sale, for cash or on credit or for future delivery, and in connection therewith may grant options, and may impose reasonable conditions such as requiring any purchaser to represent that any stock constituting part of the collateral is being purchased for investment purposes only. Upon each such sale, the Bank, unless prohibited by provision

of any applicable statute which cannot be waived, may purchase all or any part of the collateral being sold, free from and discharged of all trusts, claims, rights of redemption and equities of the undersigned.

VII. In the case of each such sale, or of any proceedings to collect any liabilities of the undersigned, the undersigned shall pay all costs and expenses of every kind incurred in connection therewith, including reasonable attorneys' fees, and after deducting such costs and expenses from the proceeds of any sale or collection, the Bank may apply any residuce to pay any liabilities of the undersigned, who will continue liable for any deficiency, with interest. The Bank at any time, at its option, may apply or reapply all or any of the net cash receipts from or on account of any of the collateral to the payment in whole or in part of, and may for any purpose allocate all or any of the collateral to, any or all of the liabilities, applying or reapplying or distributing or allocating the same as it shall elect, whether or not the item or items to which such payment is applied or to which such allocation of collateral is made be due, making proper rebate of interest or discount in case of payment on any item not due, the determination of the Bank in all such matters being conclusive.

VIII. The Bank may assign or otherwise transfer any or all of its rights and powers hereunder and/or any or all of the liabilities and/or any or all of the collateral and thereafter shall be fully discharged from all claim and responsibility with respect to any and all collateral so transferred. Upon any transfer of any of the liabilities of the undersigned, the Bank may retain all or any part of the collateral as security for all liabilities of the undersigned retained by the Bank.

All obligations and agreements of the undersigned to or with the Bank shall bind the heirs, executors, administrators, successors and/or assigns of the undersigned. If there be more than one undersigned, their obligations hereunder shall be joint and several.

IX. No delay on the part of the Bank and/or of any transferee in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right, nor shall the Bank be liable for exercising or failing to exercise any such power or right. The undersigned hereby waive(s) presentment (except for acceptance when necessary), protest, notice of protest and notice of dishonor of any and all drafts, notes, bills of exchange, checks and other instruments included in the liabilities or the collateral, or herein mentioned, whether upon inception, maturity, acceleration of maturity or due date or at any other time, and any and all other notice and demand whatsoever, whether or not relating to such instruments.

X. This is a continuing agreement, applying to all future as well as existing transactions, whether or not of the character contemplated at the date of this agreement, and if all transactions between the Bank and the undersigned shall be at any time or times closed, they shall be equally applicable to any new transactions thereafter; they shall so continue in force notwithstanding any change in any partnership party hereto, whether such change occurs through death, retirement or otherwise. The provisions hereof may not be modified, changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the modification, change, waiver, discharge or termination is sought; and each such waiver, if any, shall apply to the specific instance invoked, and shall in no way impair the rights of the Bank or the obligations of the undersigned to the Bank in any other respect at any other time. The options, powers, remedies and rights of the Bank specified herein are in addition to those otherwise created or provided by law; and the provisions of this agreement shall apply to any other agreement (if any) heretofore or hereafter entered into by the undersigned

in favor of the Bank with the same force and effect as though incorporated therein, except to the extent that any provision hereof is in direct conflict with any provision of any such other agreement.

XI. This General Liability Agreement is also sometimes called a Loan and Security Agreement. Any reference in any other instrument, agreement or document to a Loan and Security Agreement between the undersigned and the Bank, or to the Bank's form of Loan and Security Agreement, shall be deemed a reference to this General Liability Agreement.

XII. This agreement shall become effective upon being executed by the undersigned and it and the rights and obligations of the Bank and of the undersigned hereunder shall be governed by and construed in accordance with the laws of the State of New York. Any suit, action or proceeding against the undersigned with respect to this agreement may be brought in the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York and the undersigned hereby irrevocably submits to the jurisdiction of such courts for the purpose of any such suit, action or proceeding and consents to the service of process in any such suit, action or proceeding by personal delivery or by the mailing thereof by the Bank by registered or certified mail, return receipt requested, postage prepaid, to the address specified in the records of the Bank, such service of process by mail to be deemed effective on the fifth day following such mailing. The undersigned agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any manner provided by law.

RED ROCK COMMODITIES LTD.

/s/ [Illegible]

New York, N.Y., June 1st, 1990

GUARANTY

In consideration of any existing indebtedness or other liability on the part of any one or more of the parties or any successors in interest thereof to annexed General Liability Agreement (hereinafter called the "Agreement") to ALGEMENE BANK NEDERLAND N.V. ("hereinafter called the "Bank"), and/or of the making by said Bank of any loan or other grant or extension of credit under or pursuant to the provisions of the within Agreement to any one or more of said parties, and for other valuable consideration, the undersigned hereby (jointly and severally) absolutely and unconditionally guarantee(s) to said Bank, its successors and assigns, the full and punctural payment when due by the terms hereof of any and all of the "liabilities" (as defined in the within Agreement) irrespective of the validity, regularity or enforceability thereof and hereby assent(s) to all the terms and conditions of the said Agreement, and consent(s) that all or any of the "collateral" (as defined in the within Agreement) for all or any such "liabilities" may be exchanged or surrendered at any time(s), and that the time(s) of payment for all or any part of the said "liabilities" may be extended, without notice to or further assent from the undersigned, who will remain bound upon the guaranty notwithstanding any such exchange, surrender or extension.

As security for the obligations of the undersigned hereunder the undersigned hereby grants to the Bank a security interest in and a general lien upon and/or right of set-off of any and all balances of every account, wheresoever situated, of the undersigned with the Bank and any other claim of the undersigned, now or hereafter existing, and any other property, rights and interests of the undersigned, which at any time shall come into the possession, custody or control of the Bank or any of its agents associates, branches or correspondents, and the proceeds thereof. In the event of default hereunder the Bank shall have all the same rights and remedies with

respect to the property of the undersigned which the Bank has on the strength of Articles III though IX of the within Agreement with respect to the collateral.

Notice of the acceptance hereof and of the making of any loan or other grant or extension of credit under or pursuant to the provisions of the said Agreement, and promptness in making any demand hereunder or in demanding or enforcing payment of any of the said "liabilities" hereby guaranteed, are hereby waived. The undersigned also hereby waives presentment, protest and notice of protest or dishonor of any evidences of indebtedness hereby guaranteed.

This guaranty, which is binding upon the undersigned heirs, successors and assigns, is a guaranty of payment and not of collection. It shall be construed in accordance with the laws of the State of New York. The undersigned hereby makes the same submissions to jurisdiction and consents to service of process by the same procedures as are set forth in Section XII of the Agreement. This is a continuing gauranty which shall remain in force until a notice written by the undersigned, revoking or modifying the same, shall have been received by the Bank, but no such notice shall operate to release the undersigned from any liability in respect of accommodations granted at any time prior to receipt by the Bank of such notice.

Dated, New York, N.Y., the ——— day of ———— ————, 19—.

_____

_____

EX. D

[RRC Logo]

RED ROCK COMMODITIES LTD.
120 West 45th Street • New York, NY 10036
(212) 921-2100 Fax (212) 921-2870

August 27, 1992

Mr. Paul Feldman
Vice President
ABN AMRO Bank N.V.
500 Park Avenue
New York, N.Y. 10022

Dear Paul:

Notwithstanding your letter of earlier today, I am writing to express my dismay and regret of the actions of your attorney/representative at the conference of Creditors of RAM before the Israeli court on Sunday, August 23, 1992.

As you know, I personally took great care to keep you and other steel lending banks advised last week with respect to this matter. I was fully open with you and suggested the manner in which I believed both Red Rock's banks (including ABN) and our positions would be maximized. You were supportive of the plan, and you were well aware of the need to present a united front. I cautioned you that interference with our plan on the part of ABN could adversely affect the interest of ABN, Red Rock and Red Rock's other steel lending banks. At no time during these discussions did you advise me that ABN would be sending its own representative to the conference.

Out of nowhere and without any prior warning, your attorney/representative totally astonished us when he demanded that he be appointed *liquidator* (not "*receiver*" but "*liquidator*"). As you are well aware, the appoint-

ment of a liquidator results in a bankruptcy proceeding which would have jeopardized Red Rock's secured position. Needless to say, if Red Rock is unsecured so would ABN and the other steel lending banks. Accordingly, the action of your representative was contrary to the best interest, not only of ABN and Red Rock, but also the other lending banks. I cannot conceive of any reasonable rationale for such actions by your representative.

I understand that the judge was initially favorably disposed to our plan as unlike your representative, he desired to find a way to keep RAM operating. Although the court did not follow your representative's devastating argument, there is no question that the disposition of the court changed as our united front collapsed. . . .

At this time, it is both necessary and unfortunate that I have to place you on notice that the action of your representative has adversely affected both our steel lending banks (including ABN) and Red Rock and hold you responsible for any consequences resulting from his actions. In light of this unfortunate incident, I feel that it is necessary that Red Rock defer any reduction in the steel billet loan until we arrive at a better understanding as to how we will collectively act to maximize our positions and avoid further misunderstandings in a delicate situation.

With reference to your letter dated August 25, 1992, let me answer questions 1 and 3 by saying we will provide you with the documentation as soon as it is available. Regarding question 4, we are not now in a position to offer any substitute collateral. Before I answer question 2, I would like to ask you this question which is very relevant to this issue: What is the line facility that ABN will commit to Red Rock for its ongoing business so that Red Rock would be able to continue its strong operating cash flow and from that cash flow satisfy the steel lending banks? Based on your answer to my question, I will answer question 2.

To the extent your letter of today confirms your desire to work cooperatively, I look forward to working with you in a fashion which will be mutually beneficial to our respective interests in the RAM matter as well as the other steel lending banks. In this respect, Red Rock has already engaged counsel in many countries to prosecute claims for our mutual benefit and our general counsel is coordinating these efforts. Any further assistance would of course be appreciated, but I strongly urge that all steps be coordinated through our general counsel to avoid duplication and conflicts of interest of the type that occurred last Sunday. Upon my return to New York, I look forward to personally meeting with you and your management to discuss all of our outstanding business, including a schedule to reduce the steel billets line.

Very truly yours,

/s/ Menachem Pri-Har
MENACHEM PRI-HAR
President

MPH/kl

cc: Mr. Paul L. Harinstein
Sr. Vice President

John P. Guiton, Esq.
Vice President & Legal Counsel

Michael Faltischek, Esq.
Ruskin, Moscou, Evans & Faltischek